



CONFERENCE COMMITTEE REPORT DIGEST FOR HB 1919

Citations Affected: IC 13; noncode.

Synopsis: Various environmental matters. Requires the department of environmental management to publish the legislative services agency fiscal analysis of certain proposed rules in the Indiana Register before the air pollution control board, the water pollution control board, or the solid waste management board can adopt the rules. Requires the text of the fiscal analysis to be among the written materials considered at a board meeting held before the adoption of certain rules. Requires the commissioner of the department of environmental management to approve or deny permits within a certain number of days. Provides a new deadline for a person to file an appeal of the commissioner's decision to issue an initial permit under the operating permit program. Requires the commissioner to proportionally reduce the fees billed to sources with NPDES permits, solid waste permits, and hazardous waste permits if the funds in the environmental management permit operation fund less obligated expenditures exceed certain amounts. Permits the solid waste management board and the water pollution control board to change the amount of the cap by rule provided the new amount does not exceed the amount in the statute. Amends special waste requirements. Amends the voluntary environmental audit privilege to do the following: (1) specify that the privilege does not apply to criminal actions; (2) prohibit public disclosure of certain portions of certain audit reports; and (3) specify that the administrative or civil evidentiary privilege is not waived when the report is used in a criminal proceeding. Requires the department to: (1) maintain certain statistics on the use of environmental audit reports; and (2) propose an enforcement policy that provides relief from civil penalties for a voluntary disclosure that results from an audit. Requires the department to report annually to the environmental quality service council on: (1) the use of environmental audit reports; and (2) the use and effectiveness of the enforcement policy. Requires the department of environmental management to adopt a written policy concerning sources that emit styrene and to follow certain guidelines and procedures before publishing the policy. Requires the air pollution control board to adopt rules to establish appropriate standards for sources that emit styrene and to consider certain information when adopting the rules. Requires the environmental quality service council to: (1) review permit accountability timeframes; and (2) recommend to the general assembly circumstances in which the department should provide a transition period to allow certain people to choose between following certain rules, policies, and guidance documents or following the department of environmental management's RISC guidance document. (This conference committee report includes provisions from SB 241 and SB 397.)

Effective: Upon passage; July 1, 1999.



Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed Senate Amendments to Engrossed House Bill No. 1919 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Page 1, delete lines 1 through 8, begin a new paragraph and insert:
- 2 "SECTION 1. IC 13-12-3-2 IS ADDED TO THE INDIANA CODE
- 3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 4 1, 1999]: Sec. 2. (a) **The remediation and closure goals, objectives,**
- 5 **and standards for activities conducted under IC 13-22 and**
- 6 **IC 13-23 shall be consistent with the remediation objectives set**
- 7 **forth in IC 13-25-5-8.5.**
- 8 (b) **The groundwater quality standards adopted under**
- 9 **IC 13-18-17-5 shall allow, as appropriate, groundwater**
- 10 **remediations to be consistent with the remediation objectives set**
- 11 **forth in IC 13-25-5-8.5.**
- 12 SECTION 2. IC 13-14-9-5 IS AMENDED TO READ AS
- 13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) A board may not
- 14 adopt a rule until all of the following occur:
- 15 (1) The board holds a board meeting on the proposed rule.
- 16 (2) The department, after approval of the proposed rule by the
- 17 board under subsection (c), publishes the following in the Indiana
- 18 Register as provided in IC 4-22-2-24(c):
- 19 (A) The full text of the proposed rule, including any
- 20 amendments arising from the comments received before or
- 21 during the meeting held under subdivision (1).
- 22 (B) A summary of the response of the department to all
- 23 comments received at the meeting held under subdivision (1).

(C) For a proposed rule with an estimated economic impact on regulated entities that is greater than five hundred thousand dollars (\$500,000), a copy of the legislative services agency fiscal analysis required under IC 4-22-2-28.

(3) The board, after publication of the notice under subdivision (2), holds another board meeting on the proposed rule.

(4) If a third public comment period is required under section 4.5 of this chapter, the department publishes notice of the third public comment period in the Indiana Register.

(b) Board meetings held under subsection (a)(1) and (a)(3) shall be conducted in accordance with IC 4-22-2-26(b) through IC 4-22-2-26(d).

(c) At a board meeting held under subsection (a)(1), the board shall determine whether the proposed rule will:

(1) proceed to publication under subsection (a)(2);

(2) be subject to additional comments under section 3 or 4 of this chapter, considering any written finding made by the commissioner under section 7 or 8 of this chapter; or

(3) be reconsidered at a subsequent board meeting in accordance with IC 4-22-2-26(d).

SECTION 3. IC 13-14-9-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. In addition to the requirements of section 8 of this chapter, the department shall include the following in the written materials to be considered at the board meetings held under section 5(a)(1) and 5(a)(3) of this chapter:

(1) The full text of the proposed rule, as most recently prepared by the department.

(2) The written responses of the department to all comments received:

(A) during the immediately preceding comment period for a board meeting held under section 5(a)(1) of this chapter;

(B) during the immediately preceding board meeting under section 5(a)(1) of this chapter for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is not required under section 4.5 of this chapter; or

(C) during:

(i) a third public comment period that address the portion of the preliminarily adopted rule that is substantively different from the language contained in the proposed rule published in a second notice under section 4 of this chapter; ~~or and~~

(ii) the immediately preceding board meeting held under section 5(a)(1) of this chapter;

for a board meeting held under section 5(a)(3) of this chapter if a third public comment period is required under section 4.5 of this chapter.

(3) The full text of the legislative services agency fiscal analysis if a fiscal analysis is required under IC 4-22-2-28."

Page 4, delete lines 8 through 20.

Page 4, line 41, after "Sec. 7." insert "(a)".

Page 4, line 41, delete "permitted source" and insert "person".

- 1 Page 5, line 7, delete "of the billing" and insert **"each"**.
- 2 Page 5, line 13, after "fees." insert **"Adjustments to the annual fees**
- 3 **apply only to the next assessment year and then revert to the**
- 4 **amounts established under IC 13-18-20."**
- 5 Page 5, line 16, delete "one million eight hundred" and insert **"two**
- 6 **million five hundred"**.
- 7 Page 5, line 17, delete "(\$1,800,000)" and insert **"(\$2,500,000)"**.
- 8 Page 5, line 17, delete "of the billing" and insert **"each"**.
- 9 Page 5, line 20, delete "one million eight hundred" and insert **"two**
- 10 **million five hundred"**.
- 11 Page 5, line 21, delete "(\$1,800,000)" and insert **"(\$2,500,000)"**.
- 12 Page 5, line 23, after "fees." insert **"Adjustments to the annual fees**
- 13 **apply only to the next assessment year and then revert to the**
- 14 **amounts established under IC 13-20-21."**
- 15 Page 5, line 26, delete "one million eight hundred" and insert **"two**
- 16 **million five hundred"**.
- 17 Page 5, line 27, delete "(\$1,800,000)" and insert **"(\$2,500,000)"**.
- 18 Page 5, line 27, delete "of the billing" and insert **"each"**.
- 19 Page 5, line 30, delete "one million eight hundred" and insert **"two**
- 20 **million five hundred"**.
- 21 Page 5, line 31, delete "(\$1,800,000)" and insert **"(\$2,500,000)"**.
- 22 Page 5, line 33, after "fees." insert **"Adjustments to the annual fees**
- 23 **apply only to the next assessment year and then revert to the**
- 24 **amounts established under IC 13-22-12."**
- 25 Page 5, between lines 33 and 34, begin a new paragraph and insert:
- 26 **"(b) The appropriate board may adopt rules under IC 4-22-2**
- 27 **and IC 13-14-9 to adjust the amount of the fund balance at which**
- 28 **the commissioner is required to adjust individual bills under**
- 29 **subsection (a)(1), (a)(2), or (a)(3). However, the amount of the fund**
- 30 **balance established by rule under this subsection may not exceed**
- 31 **two million five hundred thousand dollars (\$2,500,000)."**
- 32 Page 5, line 35, delete "(a) Except as".
- 33 Page 5, delete lines 36 through 40.
- 34 Page 5, line 41, delete "(b)".
- 35 Page 5, run in lines 35 through 41.
- 36 Page 5, line 41, strike "solid" and insert **"special"**.
- 37 Page 5, line 41, strike "as".
- 38 Page 5, line 42, strike "special waste:" and insert **"for disposal:"**.
- 39 Page 6, line 1, strike "solid" and insert **"special"**.
- 40 Page 6, line 2, strike "solid" and insert **"special"**.
- 41 Page 6, line 4, strike "solid" and insert **"special"**.
- 42 Page 6, line 6, strike "solid" and insert **"special"**.
- 43 Page 6, delete lines 8 through 11, begin a new line block indented
- 44 and insert:
- 45 **"(2) if:**
- 46 **(A) the special waste is disposed of at a solid waste landfill**
- 47 **cell or unit that meets or exceeds Subtitle D design**
- 48 **standards of the federal Resource Conservation and**
- 49 **Recovery Act as provided in 40 CFR Part 258; and**
- 50 **(B) the disposal complies with section 7 of this chapter."**

Page 6, line 17, delete "final disposal facility." and insert **"solid waste landfill cell or unit described in section 1(2)(A) of this chapter."**

Page 6, delete lines 18 through 27, begin a new paragraph and insert:

"(b) Before a person first disposes of special waste, the person must provide the solid waste landfill with a signed notification attesting that the information on the notification is true and accurate and that:

- (1) the special waste is not hazardous waste;**
- (2) a waste determination was performed on the special waste in accordance with 40 CFR 61, 40 CFR 190 through 40 CFR 299, and 40 CFR 761;**
- (3) any special waste management requirements, including fugitive dust and heat producing waste, is identified;**
- (4) documentation that supports the waste determination will be made available, upon request, to the solid waste landfill and the department; and**
- (5) the characteristics of the waste have not changed since a waste determination was performed.**

(c) After a person has provided the notification described in subsection (b), the person must inform the solid waste landfill each time the person sends special waste described in the notification to the landfill for disposal.

(d) Notwithstanding subsection (b), a person described in subsection (a) may continue to dispose of special waste certified under this chapter."

Page 6, between lines 34 and 35, begin a new paragraph and insert:

"SECTION 12. IC 13-28-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) The privilege created by this section does not apply to criminal investigations or proceedings. Environmental audit reports are admissible in criminal investigations or proceedings.

(b) Except as provided in sections section 2 and 3 of this chapter, an environmental audit report:

- (1) is privileged; and**
- (2) is not admissible as evidence in a civil ~~a criminal~~, or an administrative legal action, including enforcement actions under IC 13-30-3.**

SECTION 13. IC 13-28-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) A party asserting the privilege described in section 1 of this chapter has the burden of proving that the party may exercise the privilege.

(b) A party asserting the privilege described in section 1 of this chapter has the burden of establishing evidence that the person made appropriate efforts to achieve compliance as described in ~~sections~~ **section 2(b) and 3(b) of this chapter if the evidence indicates that the person was in noncompliance as described in section 2(a)(2)(C) ~~or 3(a)(2)(C)~~ of this chapter.**

(c) A party seeking disclosure of material in an environmental audit report under section 2(a)(2)(A) ~~or 3(a)(2)(A)~~ of this chapter has the

burden of proving that the privilege is being asserted for a fraudulent purpose.

(d) ~~A prosecuting attorney seeking disclosure under section 3(a)(2)(D) of this chapter has the burden of proving the conditions for disclosure described in section 3(a)(2)(D) of this chapter.~~

SECTION 14. IC 13-28-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. Upon making a determination under section 2 ~~or~~ 3 of this chapter, the court may compel the disclosure of only those parts of an environmental audit report that are relevant to issues in dispute in the proceeding.

SECTION 15. IC 13-28-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Subject to ~~subsection~~ **subsections (b) and (c)**, the privilege described in section 1 of this chapter does not apply to the extent that the privilege is waived:

(1) expressly; or

(2) by implication;

by the owner or operator who prepared the environmental report or caused the report to be prepared.

(b) ~~A party may submit an environmental audit report to the department as a confidential document under IC 5-14-3 without waiving a privilege to which the party would otherwise be entitled under this chapter. A party that submits an environmental audit report to the department waives any privilege to which the party would otherwise be entitled under this chapter. If the department determines under IC 5-14-3-4(a) that part of an environmental audit report is excepted from IC 5-14-3-3, then that part of the environmental audit report may not be disclosed by a public agency unless access to the report is required by a state or federal statute or is ordered by a court as provided under IC 5-14-3-4(a).~~

(c) **When the department or a prosecuting attorney obtains, reviews, or uses an environmental audit report in a criminal proceeding, the administrative or civil evidentiary privilege created by this chapter is not waived or eliminated for any other purpose.**

SECTION 16. IC 13-28-4-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) **The department shall maintain statistics on the use of environmental audit reports in department compliance and enforcement activities, including statistics on:**

(1) **the number of times the reports are disclosed to the department;**

(2) **the number and types of violations disclosed to the department through the reports;**

(3) **the civil penalties collected for the violations; and**

(4) **the time necessary for the violations to be corrected.**

The department shall report annually to the environmental quality service council on the use of environmental audit reports.

(b) **The department shall propose an enforcement policy, pursuant to IC 13-14-1-11.5, that provides relief from civil**

penalties for a voluntary disclosure that results from an internal environmental audit. In developing this enforcement policy, the department shall consider similar policies implemented by:

- (1) the United States Environmental Protection Agency; and
- (2) states contiguous to Indiana.

(c) The department shall report annually to the environmental quality service council on the use and effectiveness of the enforcement policy.

SECTION 17. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 13-28-4-3; IC 13-28-4-5.

SECTION 18. [EFFECTIVE UPON PASSAGE] (a) Before September 1, 1999, the department of environmental management shall present the enforcement policy described in IC 13-28-4-11, as added by this act, to the environmental quality service council for discussion.

(b) Before November 1, 1999, the department of environmental management shall publish the enforcement policy consistent with IC 13-14-1-11.5, as amended by this act.

(c) This SECTION expires November 2, 1999."

Page 7, line 3, after "act." insert "This subsection expires July 1, 2001."

Page 7, line 5, after "July 1, 2000." insert "This subsection expires July 1, 2001."

Page 7, line 8, delete "solid" and insert "special".

Page 7, between lines 11 and 12, begin a new paragraph and insert: "SECTION 21. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "existing source" means a source in the reinforced plastic composites fabricating industry that:

- (1) emits styrene; and
- (2) has been issued a construction permit or an operating permit by the department of environmental management.

(b) The department of environmental management shall do the following:

(1) Before October 1, 1999, develop written policies and procedures to address changes in estimated air pollution emissions from existing sources.

(2) Before publication under subdivision (3), make a proposed non-rule policy document available to the following for review and comment:

- (A) The public.
- (B) The air pollution control board.
- (C) The environmental quality service council.
- (D) The clean manufacturing technology institute.

(3) Not later than November 1, 1999, publish a non-rule policy document describing the policies and procedures that the department will use to make determinations on air construction and operating permits for existing sources.

(c) Before December 31, 2000, the air pollution control board shall adopt rules to establish appropriate standards for control of air pollution from new and existing sources in the reinforced plastic composites fabricating industry. The air pollution control

board shall consider all available information when adopting the rules, including the following:

- (1) Available control technology.
- (2) Industry work practices.
- (3) Materials available to the industry.
- (4) Recommendations by the clean manufacturing technology institute.

(d) This SECTION expires July 1, 2001.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) Before December 1, 1999, the environmental quality service council shall submit a recommendation to the general assembly as to the circumstances in which the department of environmental management should allow a transition period during which a person that has applied to the department to perform an environmental investigation, remediation, or closure under IC 13-25-5 before December 31, 1999, may choose to employ:

- (1) the department's published Risk Integrated System of Closure (RISC) guidance document; or
 - (2) the rules, policies, and guidance documents in effect before the publication of the RISC guidance document;
- to perform the investigation, remediation, or closure.

(b) This SECTION expires December 31, 1999."

Renumber all SECTIONS consecutively.

(Reference is to ESB 1919 as reprinted April 8, 1999.)

Conference Committee Report
on
House Bill 1919

Signed by:

Senator Gard

Representative Sturtz

Senator Simpson

Representative Wolkins

Senate Conferees

House Conferees